

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #3	CCRB Case #: 201804621	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/03/2018 2:50 AM	Location of Incident: Inside of 2788 Fulton Street (Kennedy Fried Chicken)	Precinct: 75	18 Mo. SOL 12/3/2019	EO SOL 12/3/2019	
Date/Time CV Reported Sun, 06/03/2018 9:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/11/2018 11:02 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Delaney	16514	957525	075 PCT
2. POM Jonathan Cancel	14827	963894	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Delaney	Force: Police Officer Robert Delaney used a taser against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Robert Delaney	Abuse: Police Officer Robert Delaney searched § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Jonathan Cancel	Abuse: Police Officer Jonathan Cancel searched § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On June 3, 2018, § 87(2)(b) filed this complaint over the phone with the Internal Affairs Bureau. It was referred to the CCRB, and received on June 11, 2018, under log number 18-21999.

On June 3, 2018, at approximately 2:50 a.m., § 87(2)(b) was in a fast food restaurant, Kennedy Fried Chicken, located at 2788 Fulton Street, in Brooklyn. He was intoxicated at the time. Several employees of the store called 911 and reported that he was harassing customers. PO Robert Delaney and PO Jonathan Cancel, of the 75th Precinct, responded to the incident, and went to approach § 87(2)(b). PO Delaney placed a hand on § 87(2)(b)'s shoulder and asked him to stand up. § 87(2)(b) stood up, swung his arm at PO Delaney, knocking off his body worn camera, and then raised his fist to punch him. PO Delaney drew his taser, shot the darts into § 87(2)(b)'s chest and discharged it. § 87(2)(b) fell to the ground, and PO Delaney discharged the taser two more times (**Allegation A – Force:** § 87(2)(g)). The officers called an ambulance for § 87(2)(b) and then PO Delaney and PO Cancel searched § 87(2)(b) for weapons (**Allegations B and C – Abuse of Authority:** § 87(2)(g)). An ambulance arrived, and § 87(2)(b) was taken to the hospital, where the officers left him.

PO Cancel and PO Delaney both recorded part of the incident on their body worn cameras. There is no additional video footage regarding the incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Robert Delaney used a taser against § 87(2)(b)

§ 87(2)(b) had no recollection of the incident, as he was intoxicated at the time (Board Review 01). § 87(2)(b) was treated by EMTs at the scene of the incident and then later at § 87(2)(b) Hospital. His medical records (Privileged) note that he was allegedly aggressive with the police and got struck with a taser. He was agitated with the EMTs who responded to the scene and told them, “Don’t fucking touch me.” Ultimately, § 87(2)(b) refused care. He appeared normal and had no serious injuries aside from taser darts lodged in his chest, which were removed.

PO Cancel (Board Review 03) and PO Delaney (Board Review 04) gave largely consistent testimony about the incident. They both stated that they had responded to the incident location after people from the restaurant reported that § 87(2)(b) was harassing customers.

According to PO Delaney, they spoke to people at the store who pointed out § 87(2)(b) and said that he had been harassing customers. PO Cancel did not recall whether they spoke to anyone before approaching § 87(2)(b). The officers consistently stated that they approached § 87(2)(b) who appeared to be passed out and intoxicated. When they approached, PO Delaney spoke to § 87(2)(b) and § 87(2)(b) immediately jumped up and swung his arm at PO Delaney, knocking off his body worn camera in the process. Then § 87(2)(b) got into a fighting stance and raised his fist as if to punch PO Delaney. PO Delaney took out his taser and fired it at § 87(2)(b) striking him in the chest and abdomen. Neither officer said anything to § 87(2)(b) prior to this, or issued any warning about using the taser. PO Delaney discharged the taser once, and § 87(2)(b) immediately fell to the floor. Once he was on the floor, the officers were able to place § 87(2)(b) in handcuffs and there was no further struggle. PO Delaney removed the taser cartridge from § 87(2)(b) after he was handcuffed. Both officers denied that PO Delaney discharged his taser more than once.

The X-26 data sheet generated by PO Delaney's taser (Board Review 05) documents three uses of the taser for five second cycles over a period of 29 seconds during the incident.

When he was shown the X-26 data sheet during his CCRB interview, PO Delaney stated that he could not explain why the document said what it did, and reiterated that he only discharged his taser once during the incident.

The body worn camera footage from PO Delaney (Board Review 06) and PO Cancel (Board Review 07) does not begin until after § 87(2)(b) is already on the ground and officers are placing him in handcuffs. According to the time stamp, it should capture the second two of the taser discharges listed in the X-26 data sheet. However, because sound is not captured until 30 seconds into the footage, there is no sound during these times. In the footage, § 87(2)(b) can be heard shouting and the officers are telling him to calm down. There are no other sounds in the footage. At 00:38 seconds into the body worn camera footage of PO Cancel, PO Delaney's taser can be seen and it appears that the cartridge is still attached to it.

Each time a taser is triggered it is automatically documented in the X-26 data sheet, which is an electronic document stored in the device itself. There is no effective way to doctor or otherwise falsify this document. It is clear from the testimony of the officers and the medical records that darts from the taser were in contact with § 87(2)(b) from the time he was initially shot with the taser until they were removed hours later at the hospital.

Under the provisions of Patrol Guide Procedure 221-08 (Board Review 08), officers should use a taser when necessary under the circumstances, to subdue an emotionally disturbed person who is exhibiting aggressive behavior or posing a threat to themselves or others.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Robert Delaney searched § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Jonathan Cancel searched § 87(2)(b)

PO Delaney and PO Cancel both consistently stated that they searched § 87(2)(b) after he was in custody for safety reasons, as they knew he would be taken to the hospital and wanted to make sure he did not have any weapons on him. The officers were taking him to the hospital because he had been tasered, and because his behavior caused them to conclude that he was emotionally disturbed. They stated that these searches are conducted as part of the procedure they were trained in for dealing with people who are being brought to the hospital involuntarily. Both stated that they did not suspect § 87(2)(b) of having any weapon, consider him under arrest at the time, or have any intention of charging him with a crime.

§ 87(2)(b)'s medical records report that he was agitated when EMTs arrived at the scene, and was shouting a people. The records make no other statements about § 87(2)(b)'s mental health.

Under the provisions of Patrol Guide Procedure 221-13, when an emotionally disturbed person is brought into custody officers should remove from them any property that is dangerous to life or will facilitate escape (Board Review 09). However, this procedure does not permit officers to conduct a search of individuals absent an arrest or any probable cause to believe they are in possession of weapons or contraband.

In People v. DeBour 40 NY2d 210 (1976), the Court established that officers may search an individual only if they have probable cause to believe that the individual is in possession of weapons or contraband (Board Review 15).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB case to which § 87(2)(b) has been a party (Board Review 10).
- PO Cancel has been a member of service for one year and this is the first CCRB case in which he has been a subject (Board Review 11).
- PO Delaney has been a member of service for four years and he has been the subject of two allegations of misconduct in one previous case, both of which were substantiated. In case 201605625, the CCRB determined that PO Delany refused to process two civilian complaints of police misconduct. A Command Discipline-A was recommended by the CCRB, and a Command Discipline-A and formalized training were imposed by the NYPD (Board Review 12).

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(c), § 87(2)(b)
- A request for any Notice of Claim related to this incident was sent to the New York City Comptroller's Office on February 21, 2019. There has been no response as of the date of this report (Board Review 14).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date

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